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No. 80-42

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

HOWARD STEVEN STROUTH,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,

and

UNITED STATES OF AMERICA,

Respondents,

and

WESTERN UNION TELEGRAPH COMPANY,

Intervenor.

REPLY TO MEMORANDA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FILED BY THE FEDERAL RESPONDENTS AND THE WESTERN UNION TELEGRAPH COMPANY, INTERVENOR

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HOWARD STEVEN STROUTH, Petitioner

v.

FEDERAL COMMUNICATIONS COMMISSION,
UNITED STATES OF AMERICA, AND
WESTERN UNION TELEGRAPH COMPANY

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY TO RESPONDENTS' MEMORANDA IN OPPOSITION

I. Reply to Federal Respondents' Opposition:

The opposition of the Federal Respondents in ¶ 1 fails to address any of the arguments put forth in the Petition for Certiorari; rather, it seeks to avoid the issue of whether the administrative law judge erred in failing to apply (1) the Federal Rules of Evidence in determining whether or not damages had been "proven", and (2) the correct standard of law relating to the law of torts and evidence of loss which constituted elements of "general damages" for which the respondent Western Union was liable.

Federal Respondents' Memorandum states:

"The Administrative Law Judge (ALJ), however, also concluded that the petitioner had failed

to establish actual or punitive damages. ..." (Memo. p. 1 and 2).

That memorandum further states:

"The Administrative Law Judge examined each of petitioner's damage claims and found them to be unproven." (Memo p. 2).

There is no question whatever that the ALJ so found; however, petitioner is asserting that the ALJ (apparently) did not understand the most basic rules of evidence when he made the erroneous conclusions of law that petitioner had failed to prove damages. The evidence admitted at hearing included, inter alia:

(1) Cancelled checks showing economic injury to petitioner which the adverse party (Western Union) agreed in its pleadings represented damages;

(2) Western Union moved into evidence (and never rebutted) the entire damages claimed by petitioner, including a recapitulation of the cancelled checks, damages claimed as resulting from Western Union's action, as well as damages to reputation, both actual and self-perceived; and

(3) Expert testimony as to damage to reputation which was unrebutted.

Therefore, by no reasonable application of the "preponderance of the evidence" rule to the question of damages, in conjunction with the Federal Rules of Evidence, could a conclusion that no damages were suffered by petitioner result. In fact, the evidence on damages was totally unrebutted and no countervailing evidence exists in the evidentiary record of this case.

The Federal respondents' explanation of the holding of Louisville & Nashville R.R. v. Ohio Valley Tie Co., 242 U.S. 288 (1916) is wrong.

That case held that the Commission does have the power to award "general damages" but that a subsequent lawsuit in a state court also containing elements of general damages must be disallowed because "... the present [state court] judgment embraces [duplicative] elements that cannot be allowed." (at 242 U.S. 290 and 291).

For the reasons outlined foregoing the court should conclude that the Federal Respondent's arguments for denying certiorari are inapposite and that the public interest requires a hearing of the important issues of evidence and law raised by petitioner's application.

II. Reply to the Opposition of The Western Union Telegraph Company:

The opposition of the Western Union Telegraph Company (WU) is unresponsive to petitioner's reasons for granting the writ and on that basis alone it is defective.

However, misstatements of fact contained therein should not go uncorrected.

Throughout this litigation WU has maintained as a first line of defense for its illegal conduct that petitioner is a man of dubious reputation which (it is argued) could not be damaged by Western Union's felonious disclosures. Those disclosures (which cost additional legal fees, travel expenses, and incidental expenditures to defend) also implied that petitioner had lied to a WU operator.1/

1/ The trier of fact found to the contrary, i.e., that the petitioner possessed the authority (or at least thought he did) to sign another person's name to a telegram containing facts which have not been challenged.

Western Union's opposition is intentionally misleading in the following respects:

1. Strouth's claim for damages was not "based principally on allegations of (1) loss of reputation and (2) losses associated with certain 'projects'", but rather upon cancelled checks, affidavits submitted into evidence by Western Union (and unrebutted), and expert testimony (also unrebutted) of the petitioner's reputation in the financial community and the damage caused by Western Union's false disclosures.

2. Rather than defending its own felonious disclosures which gave rise to this entire case and which disclosures petitioner proved were the result of Western Union's standard operating procedures, Western Union attacks, once again in its opposition, the reputation of an unimpeached citizen of the United States, who has never been convicted of any crime, who served honorably with the U.S. Army in World War II (and is now a retired Major), who has amassed a considerable fortune and reputation as an international financier, innovator and inventor.

Misleading statements are also contained in Western Union's opposition relating to footnote No. 1 on page 3 of its brief. The connotation of this footnote is that Strouth violated some security law. The fact is that he was never found to have done so.

In a related action before the United States District Court for the Southern District of New York, U.S.D.C., SDNY 69-5562 (attached as Exhibit No. 1, hereto) (W.U. Exhibit 8), Texaco and Gulf effectively exonerated Strouth's position relating the the S.E.C. difficulties. In agreeing to pay substantial royalties, Texaco and Gulf

admitted that the location of the oil lease was as Strouth had (correctly) represented to his shareholders. Therefore, the factual basis (as originally alleged by the S.E.C.) for Strouth's problems with the S.E.C.2/ was in error.

It should be obvious to the Court that the vehemence of Western Union's attack can only be explained as a smokescreen for its own uncorrected illegal activities. Since the oppositions of both respondents admit that no corrective actions ameliorative of the violations of civil and criminal law exposed in this case by the petitioner have even as yet occurred, the public interest can only be served by a review of the record of this case by this Court.

The petition should be granted in order to examine the important issues of law, agency responsibility, and the responsibility of the Federal judiciary to enforce the Congressionally mandated function of the Federal agency in this cause.

2/ The basic dispute was over the ownership of an oil lease dependent in turn upon the location of that well. Texaco and Gulf eventually admitted that royalties were payable to Strouth and his group, thereafter paying many millions in royalties. By that time however, the S.E.C. dispute which arose because of the advance publicity of the royalties claimed, had been settled by the consent agreement with the S.E.C. noted supra.

Respectfully submitted,

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